

Introduced by Senator Burton

February 22, 2002

An act to amend Section 721 of the Family Code, relating to community property.

LEGISLATIVE COUNSEL'S DIGEST

SB 1936, as amended, Burton. Community property.

Existing law provides that a husband or wife is permitted to enter into any real property transaction with the other or any other person, and in transactions between themselves are subject to the general rules governing fiduciary relationships, except as specified, which are the same rights and duties governing nonmarital business partners. Existing law requires that both spouses provide access to books regarding transactions, render upon request information regarding community property, and account to the spouse any benefit or profit from any transaction made by one spouse without the consent of the other regarding community property.

This bill would subject a husband or wife that enters into any real property transaction with the other to those general rules governing fiduciary relationships where the transaction involves the administering of a trust. The bill would also make certain conforming changes that correct erroneous references and a technical, nonsubstantive change. *The bill would include a statement of legislative intent regarding the fiduciary relationship between spouses.*

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 721 of the Family Code is amended to read:

721. (a) Subject to subdivision (b), either husband or wife may enter into any transaction with the other, or with any other person, respecting property, which either might if unmarried.

(b) Except as provided in Sections 143, 144, ~~and 146~~ 146, 16040, and 16047 of the Probate Code, in transactions between themselves, a husband and wife are subject to the general rules governing fiduciary relationships which control the actions of persons occupying confidential relations with each other. This confidential relationship imposes a duty of the highest good faith and fair dealing on each spouse, and neither shall take any unfair advantage of the other. This confidential relationship is a fiduciary relationship subject to the same rights and duties of nonmarital business partners, as provided in Sections 16403, 16404, and 16503 of the Corporations Code, including, but not limited to, the following:

(1) Providing each spouse access at all times to any books kept regarding a transaction for the purposes of inspection and copying.

(2) Rendering upon request, true and full information of all things affecting any transaction which concerns the community property. Nothing in this section is intended to impose a duty for either spouse to keep detailed books and records of community property transactions.

(3) Accounting to the spouse, and holding as a trustee, any benefit or profit derived from any transaction by one spouse without the consent of the other spouse which concerns the community property.

SEC. 2. *It is the intent of the Legislature in enacting this act to clarify that Section 721 of the Family Code provides that the fiduciary relationship between spouses includes all of the same rights and duties in the management of community property as the rights and duties of unmarried business partners managing partnership property, as provided in Sections 16403, 16404, and 16503 of the Corporations Code, and to abrogate the ruling in In*

- 1 *re Marriage of Duffy (2001) 91 Cal.App.4th 923, to the extent that*
- 2 *it is in conflict with this clarification.*

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